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OFFICE OF PETITIONS

In re Application of :
Repp et al. :
Application No. 09/900,927 : DECISION ON PETITION
Filed: 9 July, 2001 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. 1295-00044 :

This is a decision on the petition filed on 4 December, 2003, which is treated as a petition under 37 CFR 1.78(a)(3), to accept an unintentionally delayed claim under 35 U.S.C. § 120 for the benefit of prior-filed Application No. 09/521,810, filed on 9 March, 2000 (now U.S. Patent No. 6,261,397). This is also a decision on the petition to expedite the above-referenced petition, filed on 16 January, 2004.

The petition is **GRANTED**

A petition for acceptance of a late claim for benefit under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after 29 November, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2) of the prior-filed application, unless previously submitted;¹

¹Any nonprovisional application or international application designating the United States of America claiming the benefit of one or more prior-filed copending applications or international applications designating the United States of America must contain or be amended to contain a reference (amendment to the first line of the

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The present pending application was filed on 9 July, 2001, and was copending with the above-noted, prior-filed nonprovisional application, at the time of filing, for which benefit is claimed. A reference to the above-noted, prior-filed applications has been included in an amendment under 37 CFR 1.312 to the first sentence of the specification following the title, which was filed on 17 October, 2003.

The present nonprovisional application was filed after 29 November, 2000, and the claim for benefit herein is submitted after the expiration of the period specified in 37 CFR 1.78(a)(2). Also, the reference to the prior-filed nonprovisional application was submitted during the pendency of the nonprovisional application for which the benefit is sought. See 35 U.S.C. § 120. Accordingly, having found that the present petition satisfies the conditions of 37 CFR 1.78(a)(3) for acceptance of an unintentionally delayed claim for benefit under 35 U.S.C. § 120, the petition to accept an unintentionally delayed claim to benefit to prior-filed Application No. 09/521,810 (which issued as U.S. Patent No. 6,261,397 on 17 July, 2001) is granted as of the date of filing the petition.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for

specification following the title or in an application data sheet (ADS) to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. Cross references to other related applications may be made when appropriate. (see § 1.14).

benefit of the prior-filed application noted thereon.
Accordingly, the examiner will, in due course, consider this
benefit claim and determine whether the instant application is
entitled to the benefit of the earlier filing date.

The claim of benefit has been entered in Office records, and a corrected filing receipt reflecting the subject claim of benefit is enclosed with this decision.

It is noted that the issue fee was received on 29 December, 2003.

Counsel's deposit account, No. 06-1447, has been charged the fee of \$130.00 for the petition for expedited treatment.

The application is being forwarded to Publishing Division for processing into a patent.

Telephone inquiries related to this decision should be directed to Senior Petitions Attorney Douglas I. Wood at 703-308-6918.

A handwritten signature in dark ink, appearing to read 'Charles A. Pearson', with a long horizontal flourish extending to the right.

Charles A. Pearson
Director, Office of Petitions

Encl: Corrected Filing Receipt